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9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT TACOMA

12 TERRY L. LAVERY, JR.,

13 Plaintiff,

14 v.

15 M. KRONA, and EDWARD HANSMEYER,

16 Defendants.

CASE NO. C09-5196FDB

REPORT AND
RECOMMENDATION

NOTED October 2, 2009

17 This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned
18 Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local
19 Magistrate Judges' Rules MJR 1, MJR 3, and MJR 4. This matter is before the court on
20 plaintiff's failure to respond to the court's previous order. For the reasons set forth below, I
21 recommend that this complaint be dismissed as frivolous pursuant to 28 U.S.C. § 1915.
22

23 **DISCUSSION**

24 In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the
25 conduct complained of was committed by a person acting under color of state law and that
26 (2) the conduct deprived a person of a right, privilege, or immunity secured by the

1 Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981),
2 overruled on other grounds, Daniels v. Williams, 474 U.S. 327 (1986). Section 1983 is the
3 appropriate avenue to remedy an alleged wrong only if both of these elements are present.
4 Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020
5 (1986).

6
7 Plaintiff must allege facts showing how individually named defendants caused or
8 personally participated in causing the harm alleged in the complaint. Arnold v. IBM, 637
9 F.2d 1350, 1355 (9th Cir. 1981). A § 1983 suit cannot be based on vicarious liability alone,
10 but must allege the defendants' own conduct violated the plaintiff's civil rights. City of
11 Canton v. Harris, 489 U.S. 378, 385-90 (1989). A supervisor may be held liable only "if
12 there exists either, (1) his or her personal involvement in the constitutional deprivation, or (2)
13 a sufficient causal connection between a supervisor's wrongful conduct and the constitutional
14 violation." Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th cir. 1991), *cert.*
15 *denied* 502 U.S. 1074 (1992).

17 Frivolous in forma pauperis complaints may be dismissed before service of process under
18 28 U.S.C. § 1915. Neitzke v. Williams, 490 U.S. 319, 324 (1989). A complaint is frivolous
19 if "it lacks an arguable basis in law or in fact." Id. at 325. Leave to amend is not necessary
20 where it is clear that the deficiencies in the complaint cannot be cured by amendment.
21 Franklin v. Murphy, 745 F.2d 1221, 1228 n.9 (9th Cir. 1984). Plaintiff's complaint should be
22 dismissed as frivolous.

24 Here, on April 7, 2009, the Court Clerk received plaintiff's complaint along with an
25 application to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. On May 5, 2009, the
26 court granted the application and reviewed the complaint, which was found to be deficient.

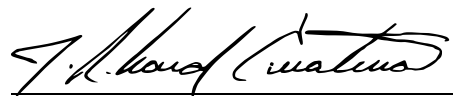
1 See Doc. 12. The court specifically explained that plaintiff's claims did not appear to raise a
2 cognizable claim and that plaintiff failed to show how a particular individual defendant
3 personally participated in an alleged violation. *Id.* The court provided plaintiff the
4 opportunity to cure these deficiencies and/or to amend his complaint by not later than June 8,
5 2009. The court has not received a response to this order.
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7 CONCLUSION

8 Plaintiff's complaint contains several fatal errors, and though he was given the
9 opportunity to cure those deficiencies, plaintiff has failed to respond to the court's order to
10 show cause why this matter should not be summarily dismissed. Accordingly, the
11 undersigned recommends that the Court dismiss this complaint prior to service as frivolous
12 pursuant to 28 U.S.C. §1915.
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14 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
15 Procedure, the parties shall have ten (10) days from service of this Report to file written
16 objections. *See also*, Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of
17 those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985).
18 Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter
19 for consideration on **October 2, 2009**, as noted in the caption.
20

21 DATED this 8th day of September, 2009.

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23 

24 J. Richard Creatura
25 United States Magistrate Judge
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